IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CONTEMPT PETITION NO.366 OF 2004
IN
SECOND APPEAL NO.429 OF 2003

Arvind Dagduram Chopda,
since deceased, through LRs
1a. Smt. Kanchan Arvind
Chopda and others .... Petitioners
Vs.
Kisan Yesu Kotwal & others .... Respondents

Shri A.L. Gore for the Petitioners.

Shri R.D. Soni for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 08, 2004

P.C:

1. Heard. The grievance of the petitioners is that inspite of specific order by this Court passed in Civil Application No.872 of 2002 in Second Appeal No.429 of 2003 on 3-9-2002 directing the parties to maintain status quo in respect of the suit property, the respondents herein in violation of the said order have created third party interest under the agreement dated 17-7-2003 and that the agreement of 17-7-2003 disclose a prior agreement dated 17-3-2003 in relation to the suit property.

2. Undisputedly, the appeal was dismissed for

non-prosecution on 25-6-2003 and thereafter on application filed by the petitioners, rule was issued on 1-10-2003 while reviving the order of status quo which was granted earlier on 3-9-2003. Undoubtedly, during the period from 25-6-2003 till 1-10-2003 there was no order against the respondents as the Second Appeal was not pending on account of its dismissal. Undisputedly, the agreement complained of relates to 17-7-2003. Being so, the same was executed during the period when there was no adverse order against the respondents.

3. As regards the contention that the agreement dated 17-7-2003 refers to earlier agreement dated 17-3-2003, undoubtedly there is a reference to such earlier deed dated 17-3-2003. However, it refers to a deed between Shri Gautam Bora and Shri Santosh Bhikchand Bora who were not parties to the Second Appeal wherein direction for status quo was issued. Being so, they were not bound by the order passed by this Court in the Second Appeal and merely because the persons unconcerned with the appeal had entered into some agreement for transaction in relation to the suit property, the respondents herein cannot be held to be responsible for the same nor they can be prosecuted for contempt of Court.

4. As there is no case made out for proceeding against the respondents for contempt of Court, the application

is rejected.